

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 333 of 1985

in

SPECIAL CIVIL APPLICATION No 5924 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

and

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

PRAHALADJI NANALAL MEHTA

Versus

AHMEDABAD MUNICIPAL SCHOOL BOARD

Appearance:

1. LETTERS PATENT APPEAL No. 333 of 1985
NOTICE SERVED for Appellant No.
RULE SERVED for Respondent No. 1
MR TR MISHRA for Respondent No. 2.
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CORAM : MR.JUSTICE B.J.SHETHNA

and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 18/06/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

None present for the appellant. Rule served but no one appears for respondent no. 1. Mr. T.R. Mishra, learned counsel for respondent no. 2 is absent.

2. The appellant was recruited as a Lecturer in the Primary Training College but was serving as Supervisor with the respondent Corporation in 1983. Both the posts were interchangeable. But later on it was noticed that the post of Supervisor was statutory post, therefore, it cannot be equated with the post of Lecturer. Therefore, the Corporation corrected its mistake. The appellant - petitioner was, therefore, given an option to go back to his post of Lecturer in the training college which was challenged before this Court by way of the writ petition i.e. Special Civil Application No. 5924 of 1983.

3. The learned Single Judge rejected the said petition as he was of the opinion that the Corporation corrected its mistake of making the post interchangeable. Another contention raised before the learned Single Judge was that the Supervisors were not assigned duties as provided under rule 67 of the Primary Education Rules, 1949; but the learned Judge was not much impressed by that argument. It was observed by the learned Single Judge that at the best it can be said to be irregularity, but that would not confer any right on the petitioner. Regarding other disputed questions of facts the learned Single Judge was not inclined to interfere in his writ jurisdiction and rightly so in our opinion. This order passed by the learned Single Judge dismissing the writ petition of the appellant petitioner on 8/2/1984 was challenged by appellant in this appeal filed in April 1984. Regular no. to this appeal was given in 1985 after the office objections were removed.

4. The Division Bench of this Court for the first time admitted this appeal on 24/2/1987. Thereafter, this appeal was listed for the first time for final disposal on the running final hearing board of 16/6/2003. The appeal was filed by the appellant through his learned counsel, who was later on elevated in 1990 to the Bench of this Court. Therefore, office had issued notice to the appellant - petitioner to engage any other advocate

to plead his case. But it seems that the appellant had lost all interest in the appeal and, therefore, not engaged any advocate nor thought it fit to remain present. Be that as it may.

5. Under the circumstances, we have no option but to go through the averments made in the petition as well as averments made in this appeal. Having carefully gone through the same, we are of the considered opinion that the learned Single Judge has not committed any error in dismissing the writ petition. While dismissing the writ petition the learned Single Judge has assigned cogent reasons. Therefore, no interference is called for. Once it is found that the post is not interchangeable, then there cannot be any interference when the Corporation corrected its mistake at the earliest. When disputed questions of facts are involved in the petition, then ordinarily this Court would not like to exercise its writ jurisdiction. Therefore, it cannot be said that the learned Single Judge was wrong in dismissing the writ petition on this ground.

6. In view of the above discussions, this appeal fails and is hereby dismissed.

[B.J. SHETHNA, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.